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May 29.

FULL BENCH.

Before Sir John Stanley, Knight, Chief Justice, Mr. Justice Banerji and Mr. Justice Richards.

RAM CHARAN DAS AND OTHERS (PLAINTIFFS) *v.* GAYA PRASAD AND OTHERS (DEFENDANTS). *

Act No. XV of 1877 (Indian Limitation Act), section 19—Limitation—Acknowledgment of debt—Guardian and minor—Capacity of natural guardian to acknowledge a debt on behalf of his ward.

Held by BANERJI and RICHARDS, JJ. (STANLEY, C.J., *dissentiente*) that when a guardian acting within the scope of his authority and for the benefit of a minor makes an acknowledgment of a debt, such acknowledgment is by an agent duly authorized in this behalf and gives a fresh start for the computation of limitation: *Tilak Singh* v. *Chhutta Singh* (1), dissented from. *Chinnaya Nayudu* v. *Gurunatham Chetti* (2), *Sobhanadri Appa Rau* v. *Sriramulu* (3), *Kailasa Padiachi* v. *Ponnukannu Achi* (4), *Subramania Ayyar* v. *Arumuga Chetty* (5), *Annapagauda Tammangauda* v. *Sangadigyapa* (6), *Narendra Nath Sarkar* v. *Rai Charan Haldar* (7), *Beti Maharani* v. *The Collector of Etawah* (8), *Kamla Kuar* v. *Har Sahai* (9) and *Chinnery* v. *Evans* (10) referred to.

Per STANLEY, C. J., The relation of guardian and ward resembles rather that of trustee and *cestui que trust* than that of principal and agent. A guardian cannot be considered the authorized agent of his ward for the purpose of making an acknowledgment of a debt on behalf of his ward within the meaning of section 19 of the Indian Limitation Act. *Matthew* v. *Brise* (11), *Markwick* v. *Hardingham* (12), *Beti Maharani* v. *The Collector of Etawah* (8) and *Chinnery* v. *Evans* (10) referred to.

THE suit out of which this appeal arose was brought to recover the balance, amounting to Rs. 3,358-9-3, of moneys advanced by the plaintiffs to Babu Lal, the father of the defendants. Babu Lal died on the 5th of March 1906 leaving two minor sons, the defendants, and their mother, Musammat Sundar Dei, him surviving. The plaintiffs sought to recover the sum claimed by them out of the assets of Babu Lal in the hands of the defendants. They did not seek to make the defendants personally liable. The defendants pleaded that the suit was barred by limitation.

* First Appeal No. 137 of 1906, from a decree of Raj Nath Sahib, Subordinate Judge of Allahabad, dated the 12th of December 1905.

(1) (1904) I. L. R., 26 All., 598.
(2) (1882) I. L. R., 5 Mad., 169.
(3) (1893) I. L. R., 17 Mad., 221.
(4) (1894) I. L. R., 18 Mad., 456.
(5) (1902) I. L. R., 26 Mad., 330.
(6) (1901) I. L. R., 26 Bom., 221.
(7) (1902) I. L. R., 29 Calc., 647.
(8) (1894) I. L. R., 17 All., 198.
(9) Weekly Notes, 1888, p. 187.
(10) (1864) 11 H. L. C., 115.
(11) (1851) 14 Beav., 341.
(12) (1880) 15 Ch. D., 349.

Against this plea the plaintiffs set up certain acknowledgments made by Musammat Sundar Dei as guardian of the defendants, which, if valid, would admittedly have had the effect of saving limitation. The defendants contended that their mother had no authority to acknowledge on their behalf any liability to pay the debt which was the subject of the suit, and this contention was upheld by the Court of first instance, which accordingly dismissed the suit. The plaintiffs appealed to the High Court.

The Hon'ble Pandit *Sundar Lal*, for the appellants.

The question is whether the natural guardian of a minor can acknowledge a debt so as to extend the period of limitation for the institution of a suit to recover the same under section 19 of the Indian Limitation Act, 1877. The decision of this question turns entirely upon the interpretation of the words "or by an agent duly authorized in this behalf" occurring in explanation 2 to this section. The Allahabad High Court has answered this question in the negative. *Tilak Singh* v. *Chhutta Singh* (1). The Bombay High Court in the Full Bench case of *Annapagauda* v. *Sangadigyapa* (2) took a contrary view. Section 4 of Act No. XIV of 1859 required the signature of the person against whom the acknowledgment was sought to be used. It was not clear whether under that section the agent of a minor could sign an acknowledgment for him. In Act No. IX of 1871 and in the present Limitation Act all doubt on this point has been removed by the addition of the necessary words to the section.

The next question is whether the term "agent" as used in section 19 is limited to the case of an agent appointed by a person *sui juris* to represent him. It is submitted that the term is not used in such a limited sense. In the case of *Beti Maharani* v. *The Collector of Etawah* (3) the Court of Wards constituted under the North-Western Provinces Land Revenue Act of 1873 was held to be an "agent" within the meaning of the corresponding section of the former Limitation Act. The Court of Wards might take charge of the estate of a disqualified proprietor in spite of his protests. It derived no authority from the proprietor to act on his behalf, but by virtue of the provisions of section 206

(1) (1904) I. L. R., 26 All., 598. (2) (1901) I. L. R., 26 Bom., 221.
(3) (1894) I. L R., 17 All, 198.

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of the Land Revenue Act it could acknowledge a debt. Similarly other persons not appointed by the debtor as his agents, have been held to be "agents" competent to acknowledge a debt. Such are *(a)* the managing member of a joint family, *(b)* the guardian of a minor appointed by law, *(c)* the natural guardian of a minor and *(d)* the receiver of an estate appointed by the Court. The powers of a natural guardian are as wide as, if not wider than, those of a guardian appointed by law. See Mayne's Hindu Law, 7th edition, pp. 273 and 283. The guardian is bound to pay the debts due by his ward and is entitled to make part payments towards the same. If it is his duty to make such payments, the legal consequences which are entailed by the provisions of section 20 of Act No. XV of 1877 must follow. A guardian can do anything which is for the benefit of his ward, and in this case the acknowledgment was for the benefit of the wards.

The following cases were also cited :—

Narendra Nath Sarkar v. *Rai Charan Haldar* (1), *Kailasa Padiachi* v. *Ponnukannu Achi* (2), *Bai Bhalli* v. *Narain Lal Dorgabhai* (3), *Chinnery* v. *Evans* (4), *Sobhanadri Appa Rau* v. *Sriramulu* (5) and *Bhasker Tatya Shet* v. *Vigo Lal* (6).

Dr. *Tej Bahadur Sapru*, for the respondents.

The natural guardian of a minor could not be his agent. The relation between guardian and ward was that of trustee and beneficiary. No one could become the agent of another except by the will of that other,—Blackwood's Principal and Agent, p. 34.

It was obvious that the minor could not appoint an agent. Besides, the most important words in explanation 2 to section 19 were "duly authorized in this behalf." An agent duly authorized in this behalf must be a person having authority from his principal to make an acknowledgment of a debt within the meaning of section 19 of the Limitation Act. This could not be said at all of a guardian. It was not enough to say that an acknowledgment by the guardian might be for the benefit of the minor. The test was whether he had any authority to make an acknowledgment. The powers of a natural guardian under the Hindu law were not larger than those of any other guardian.

(1) (1902) I. L. R., 29 Calc., 647.
(2) (1894) I. L. R., 18 Mad., 456.
(3) (1902) 4 Bom., L. R., 812.
(4) (1864) 11 H. L. C., 115.
(5) (1893) I. L. R., 17 Mad., 221.
(6) (1893) I. L. R., 17 Bom., 512.

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gives a definition of the word "signed" as used in the section as meaning "signed either personally *or by an agent duly authorized in this behalf.*" The person who gave the acknowledgment which is relied on by the plaintiffs appellants was Musammat Sundar Dei, the mother and natural guardian of the minor defendants. The appellants based their contention mainly on the ruling of a Full Bench of the Bombay High Court in the case of *Annapagauda* v. *Sangadigyapa* (1), in which it was held, overruling a decision of a Bench of the same Court in *Maharana Shri Ranmal Singji* v. *Vadilal Vakhatchand* (2), that an acknowledgment of a debt by a certificated guardian of an infant would save limitation.

According to the section an acknowledgment must be signed either *personally*, that is, by the person liable to pay the debt or by *his agent duly authorized* in that behalf. It is clear that signature by a guardian is not a signature by the debtor personally, and therefore we must consider whether a natural guardian is an agent duly authorized to give acknowledgments within the meaning of the section.

Let us first see what is the relationship existing between a minor and his natural guardian. The Hindu law vests the guardianship of a minor in the Sovereign as *parens patriæ*. According to Manu:—"The King shall protect the inherited and other property of the minor until he has returned from his teacher's house or until he has passed his minority" (Chapter VIII, section 27). The same is the law in England. The King as *parens patriæ* is the guardian of minors. But from the earliest times the Court of Chancery, representing in the person of the Lord Chancellor the authority of the Sovereign, exercised jurisdiction in the matter of the wardship of infants and the care of their estates. A similar jurisdiction is exercised by the courts in this country. A suit relating to the estate or person of an infant and for his benefit has the effect of making him a ward of Court, and the Court acting in the place of the Sovereign may pass such orders generally for the benefit of the minor and the protection of his property as it thinks fit. Necessarily the duty which vests in the Sovereign is delegated to the minor's

(1) (1901) I. L. R., 26 Bom., 221. (2) (1896) I. L. R., 20 Bom., 61.

As to the case of *Chinnery* v. *Evans* there, under an Irish Statute the receiver was bound to make the payment in question. He was not acting as the agent of the mortgagor, but under legislative authority. Similarly in the Privy Council case of *Beti Maharani* v. *The Collector of Etawah* (1) the Court of Wards acted not as an agent, but under a certain Statute. Besides, the remarks of their Lordships of the Privy Council in that case were *obiter*. In any event, that case was no authority for holding that a natural guardian could be an agent within the meaning of section 19 of the Limitation Act. It was submitted that the cases in which it had been held that the manager of a joint family could make a valid acknowledgment stood on a peculiar footing. There the interests were all undivided and identical.

In addition to the cases cited by the learned advocate for the appellants the following cases were also referred to and discussed: *Baijonath Ram Goenki* v. *Hem Chandra Bose* (2), *Lilley* v. *Foad* (3), *Lewin* v. *Wilson* (4), *Chhato Ram* v. *Bilto Ali* (5), *Syed-ud-din Hossain* v. *Lloyd* (6), *Wajibun* v. *Kadir Buksh* (7), *Maharana Sri Ranmal* v. *Vadi Lal* (8), *Subramania Ayyar* v. *Arumuga Chetty* (9) and *Chinnaya Nayudu* v. *Gurunatham Chetti* (10).

The Hon'ble Pandit *Sundar Lal* replied.

STANLEY, C.J.—This appeal was referred to a Full Bench in consequence of the conflict of authority upon the only question involved in it, namely, whether a natural guardian of a minor is competent to give an acknowledgment so as to give a fresh start for limitation within the meaning of section 19 of the Limitation Act. This section runs as follows:—"If before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing, signed by the party against whom such property or right is claimed or by some person through whom he derives title or liability, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the acknowledgment was so signed." Explanation (2) to the section

(1) (1894) I. L. R., 17 All., 198.
(2) (1906) 10 C. W. N., 959.
(3) (1899) 2 Ch., 107.
(4) (1886) 11 A. C., 639.
(5) (1898) I. L. R., 26 Calc., 51.
(6) (1883) 13 C. L., R., 112.
(7) (1886) I. L. R., 13 Calc., 292.
(8) (1896) I. L. R., 20 Bom., 61.
(9) (1902) I. L. R., 26 Mad., 330.
(10) (1882) I. L. R., 5 Mad., 169.

relations, and of these the father and next to him the mother is the natural guardian. Under the Guardians and Wards Act a guardian stands in a fiduciary relation to his ward (section 20), and as regards the property of his ward he is bound to deal therewith as carefully as a man of ordinary prudence would deal with it if it were his own, and, subject to the provisions of the Act, he may do all acts which are reasonable and proper *for the realization, protection or benefit of the property.* A natural guardian is a trustee with powers of management of his ward's estate, and has as such very extensive powers. But the question before us is not, I think, one in which we have to determine so much the powers of a guardian as the relationship which subsists between a guardian and his ward. Whether in fact that relationship is, in any case, the relationship of principal and agent. Unless the relationship of principal and agent subsists between a natural guardian and his ward, it seems to me that it would be difficult to hold that such guardian can be regarded as an agent within the meaning of section 19 of the Limitation Act.

"The relation of guardian and ward," observed Lord Romilly, M. R, in *Matthew* v. *Brise* (1) "is strictly that of trustee and *cestui que trust.* I look upon it as a peculiar relation of trusteeship, and this appears from the case of the *Duke of Beaufort* v. *Berty.* A guardian is not only a trustee of the property, as in an ordinary case of trust, but he is also the guardian of the person of the infant, with many duties to perform, such as to see to his education and maintenance." Then he quotes Lord Macclesfield's words, namely, "that guardians were but trustees and that the jurisdiction of the Court was grounded upon the general power and jurisdiction which it had over all trustees, and a guardianship is most plainly a trust." The relation of a principal and agent is different. A good deal of the arguments addressed to us dealt with the powers of guardians and managers of Hindu families, and too little, I think, with the words of the Statute which we have to interpret. I take the word "agent" and ask the elementary question—who is an agent? Story (8th Edn., p. 2) defines agency thus:—"In the common language of life he who being competent and *sui juris*

(1) (1851) 14 Beav., 341.

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to do any act for his own benefit or on his own account employs another to do it is called the principal, constituent or employer; and he who is thus employed is called the agent, attorney, proxy or delegate of the principal, constituent or employer. The relation thus created between the parties is termed an agency. The power thus delegated is called in law an authority." The relation of agency exists and can only exist by virtue of the express or implied assent of both principal and agent, except in certain cases of necessity in which such relation is imposed by operation of law. (Bowstead on Agency, 2nd Edn., p. 15; *Markwick* v. *Hardingham*, (1). "An agent," to use the definition contained in the Indian Contract Act, "is a person employed to do any act for another, or to represent another in dealings with a third person". An infant cannot employ such an agent (Indian Contract Act, section 123). Only in a very loose sense of the word can the term agent, as it seems to me, be applied to a person who occupies the position of a trustee. No doubt anyone who does any act for another may be described as agent of that person. But strictly speaking the word agent is used to denote a person who is employed by a principal to act for him generally or to do some particular act only and cannot be properly applied to a trustee. The relationship is not necessarily a contractual one. Agents may be appointed under powers of attorney or in writing or by word of mouth to do acts for their principals. The parties so appointed may act or not as they please. If they do act, the relationship between them and the principals is not contractual.

Let me refer now to the case I have mentioned above, in which it was decided that a guardian appointed under the Guardians and Wards Act can sign an acknowledgment of liability in respect of a debt, or pay part of the principal, so as to extend the period of limitation against his ward. The learned Chief Justice, Sir Lawrence Jenkins, in his judgment quoted the case of *Chinnery* v. *Evans* (2) as establishing the proposition that it was not necessary for the validity of an acknowledgmen by an agent that the relationship should be contractual. By "contractual" I presume he meant that the agent need

(1) (1880) 15 Ch. D., 349. (2) (1864) 11 H. L. C., 115.

not be actually appointed by the party chargeable. In that case a payment made by a receiver appointed under the Irish Statute, 11 and 12 George III, Cap. X, was held to be a payment which took the case out of the Statute of Limitation, 3 and 4 William IV, Cap. XXVII, which requires that such payment should be made by the party chargeable or his agent. The learned Chief Justice also quoted the passage from the judgment of the Judicial Committee in *Beti Maharani* v. *The Collector of Etawah* (1), ending with the words:—"It is difficult to see how a *sarbarahkar* not being guardian can be authorized to admit a personal liability. The point has not been carefully inquired into, and in the absence of accurate knowledge their Lordships will only say that Raj Kunwar's (the *sarbarahkar's*) authority seems very doubtful," and he says:—"It would be straining these words too much to spell out of them an authoritative pronouncement that the guardian of one under disability could be an agent for the purpose of the Limitation Act, but at least it is evident that such a proposition did not strike their Lordships as in any way preposterous." In that case the acknowledgment relied on was by the Court of Wards exercising jurisdiction under the North-Western Provinces Land Revenue Act of 1873. Section 203 of that Act defines the Court's power thus:—"The Court of Wards shall have power to give such leases or farms of the whole or any part of the property under its charge and to mortgage or sell any part of such property and to do all such other acts as it may judge to be most for the benefit of the property *and the advantage of the disqualified holder.*" The learned Chief Justice in his judgment observes:—"There is nothing in the Act which could constitute the Court of Wards the person against whom the debt was claimed; therefore it is only as the agent for Raj Kunwar duly authorized in that behalf that it could have signed the acknowledgment of the debt. The Court's agency was manifestly not contractual, so that we have in this case a further warrant for considering (notwithstanding the decisions to the contrary) whether a guardian can be his ward's agent for the purpose of making a payment that will attract the consequences prescribed in section 20." I may here point out that the Court of Wards,

(1) (1894) I. L. R. 17 All. 198.

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as the receiver in *Chinnery* v. *Evans*, is the creature of the Legislature and derives its authority by Statute. With due deference to the learned Chief Justice, I am wholly unable to agree with him that the Court of Wards was in any sense the agent of Raj Kunwar. It acted under the authority of the Legislature and not under the authority of Raj Kunwar or anybody else. It may be that Raj Kunwar is a clerical error and that the ward Pirthi and not Raj Kunwar was intended. Then, adverting to the question whether a guardian can be his ward's agent, he says:—"In my opinion he can be such an agent, if it can be said he is 'duly authorized in that behalf' and he is 'duly authorized in that behalf,' if, as between himself and his ward, he has a right to make the particular payment." To determine this right we must look to the Guardians and Wards Act. It is provided by the 27th section of that Act that "a guardian of the property of a ward is bound to deal therewith as carefully as a man of ordinary prudence would deal with it if it were his own, and, subject to the provisions of this Chapter, he may do all acts which are reasonable and proper for the realization, protection and benefit of the property. Therefore in each case it must be seen whether the particular payment answers this description. If on the facts it appears that it does, then as to that payment the guardian is an agent of the minor duly authorized in that behalf, otherwise he is not." Then, coming to the question whether a guardian's signature to an acknowledgment has any operation under section 19 of the Limitation Act, holding that *Beti Maharani's* case was of special value; as it was there evidently thought that the Court of Wards could give an acknowledgment, by parity of reasoning, he came to the conclusion that "a guardian can sign an acknowledgment for the purposes of section 19 of the Guardians and Wards Acts," subject to the qualification that in each case it must be shown that the guardian complied with the conditions of section 27 of the Guardians and Wards Act and that in each case the guardian's act was for the protection and benefit of the ward's property.

Now the suit of *Chinnery* v. *Evans* arose under the Statute of Limitation, 3 and 4 William IV, Cap. XXVII, which requires that a payment, in order to take a case out of the Statute, must

be made by the party chargeable or his agent, and the question was whether in that case the payment was so made. The payment was made by a receiver appointed under the Irish Statute, 11 and 12 Geo. III, Cap. X, which enacted that "in all cases when one and a half years' interest shall be due, the Courts of Equity upon application in the manner hereinafter mentioned, shall appoint a receiver to receive such parts of the rents of the mortgaged premises as shall be sufficient to pay such arrears of interest, and also the accruing interest of the said mortgage-money, from time to time, one half year when the other shall become due, until the whole of such interest due on the mortgage shall be discharged." The contest in that case was whose agent the receiver was, and it was held that the receiver was the agent of the mortgagor and that any payment made by him in pursuance of the order is payment in law by the legal agent of the person liable to pay. By the act of the Legislature the receiver was appointed the agent of the mortgagor for the purpose of paying interest. We get little help from this case. The learned Chief Justice indeed only relied on it as establishing that the relation of a principal and his agent who gives an acknowledgment of a debt due by the principal need not be contractual. As I have already pointed out, the relation of principal and agent is not necessarily contractual; a person, to take a common illustration, may be appointed by power of attorney to do an act for another, and no contractual relationship arises. The receiver was by the Act of the Legislature appointed agent of the mortgagor to make payments of interest, and therefore the payment was binding on the mortgagor. There is no enactment of the Legislature that a guardian, whether a natural or a certificated guardian, shall be such agent. In the case of a certificated guardian the Legislature empowers such guardian to do such acts as are reasonable and proper for the realization, protection or benefit of the property of his ward. It does not prescribe that he shall be his ward's agent for any purpose. He acts as trustee, not as agent. Then the learned Chief Justice holds that a guardian has authority to give an acknowledgment, not in all cases, but only in cases in which it is shown that his act was for the protection and benefit of the

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ward's property. According to this view the guardian is not the duly authorized agent to give an acknowledgment on behalf of an infant, unless it can be shown by the party who relies on the acknowledgment that the guardian's act was for the protection and benefit of the ward's property. As to the authority of the Court of Wards to give an acknowledgment, the learned Chief Justice was of opinion that the Judicial Committee considered that an acknowledgment by the Court of Wards would operate under section 19, and he seemed to think that there was a close analogy between the case of a guardian appointed under the Guardians and Wards Act and the Court of Wards. I confess that I am unable to see that there is any such analogy. The Court of Wards is created by Statute, and it performs, as it seems to me, the duties of the Sovereign as *parens patriæ* and has very large powers under the North-Western Provinces and Oudh Court of Wards Act, III of 1899, which superseded the earlier Act to which the learned Chief Justice referred, namely, the North-Western Provinces Land Revenue Act of 1873, as it also had under the repealed Act. Section 35 of the later Act provides that "the Court of Wards can mortgage or sell the whole or any part of the property under its superintendence, and may give leases, and may generally pass such orders and do such acts not inconsistent with the provisions of this or any other Act for the time being in force as it may judge to be for the *advantage of the ward or for the benefit of the property.*" In the earlier Act likewise, under section 203, the Court was empowered to do "all such other acts as it may judge to be most for the benefit of the property and *for the advantage of the disqualified proprietor.*" In both these Acts very wide powers are given, not merely for the benefit of the property of the ward but also for his advantage. In the case of the Guardians and the Wards Act these wide powers are not given to a guardian. Section 27 of it only gives power to a guardian of the property to do all acts which are reasonable and proper *for the realization, protection or benefit of the property.*" It is hard to see how the acknowledgment of a debt can be regarded as an act done for the protection or benefit of property. Then it is to be

remembered that the powers of the Court of Wards are conferred by the Legislature and not by the proprietor whose estate is under its management. It seems to me therefore that the case of *Beti Maharani* v. *The Collector of Etawah* throws but little light on the question before us. Then the learned advocate for the appellants relied upon the large powers which the manager of a joint Hindu family possesses in regard to the management of the estate of the joint family and the payment of debts. It appears to me that there is no close analogy between the case of such a manager and that of a natural guardian of a minor. The powers of a manager of a joint Hindu family are based on the oneness or unity of the family. The manager represents the common interests of the family, which is regarded as a corporation, union and undivided interests being the rule. But such a manager is not an agent for the other members of the family. Their Lordships of the Privy Council thus defined his position recently:—"Such a person is not the agent of the members of the family so as to make them liable to be sued as if they were the principals of the manager. The relation of such persons is not that of principal or agent or of partners; it is much more like that of trustee and *cestui que trust*"—*Anna Malai Chetty* v. *Murugasa Chetty* (1).

Now I have shown that the relation subsisting between a guardian and his ward is not that of principal and agent but that of trustee and *cestui que trust*; that an agency can only exist by virtue of the express or implied assent of both principal and agent, except in certain cases of necessity, and that an infant cannot appoint an agent. What the powers of a guardian generally are is, I think, beside the question when we are called upon to interpret the meaning of a section such as section 19 of the Limitation Act. The section gives a new starting point for limitation in a case where an acknowledgment of liability has been made in writing, signed by the party against whom property or a right is claimed, and the word signed is defined as meaning either personally or *by an agent duly authorized* in this behalf. It is obvious, as I have said, that signature by a guardian is not a

(1) (1903) L. R., 30 I. A., 220, at. p. 228.

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personal signature by his ward, and therefore the question which we have to determine is whether a guardian is an "agent duly authorized in this behalf," that is, to give an acknowledgment. It seems to me that we must interpret "agent" in this section in its ordinary sense, that is, as a person employed by a competent person to give the acknowledgment. In articles 89 and 90 of the second schedule to the Limitation Act we find the word used in its ordinary sense, and it is to be presumed that the same meaning was intended for it in every part of the Act. A guardian is not employed by his ward, and he has not, up to the present at least, been constituted by the Legislature his ward's agent. Then an agent must be authorized to give the acknowledgment. The ward not being competent to appoint an agent cannot give any such authority. A guardian, therefore, cannot, I think, be an agent within the purview of the section. In this case Musammat Sundar Dei, the mother and natural guardian of the minors, did not purport to give the acknowledgment as their agent, but as their guardian, and as such guardian, I am of opinion, she had no authority to give the acknowledgment. She was not an agent duly authorized to give it.

But it is said that a minor may suffer grave injury if it be the case that his natural guardian cannot give an acknowledgment of a debt: that creditors will be compelled to take legal proceedings to enforce their rights to the detriment of the minor and his property. I do not apprehend that any such serious consequences would arise. In any case of difficulty or doubt it is always open to the guardian of a minor to place the minor under the protection of the Court, and I am disposed to think that in the majority of cases the intervention of the Court would be not only desirable but in the highest degree for the interests of minors. If a creditor is forced to take legal proceedings for the recovery of a debt, then, upon the institution of a suit, the minor becomes a ward of Court and the Court when satisfied that the debt is *bonâ fide* and is owing can pass such orders for the payment of it as it thinks fit, and protect the minor's property so far as possible. It would be not unattended with danger to recognize a right in a Hindu mother as guardian of her infant sons to give acknowledgments of debts. A Hindu lady is as a rule

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pardanashin and unacquainted with business, and so quite incapable independently of others to protect the property of her minor sons. On whichever side, however, the weight of convenience lies, we are bound by the express words of the Statute, and I see no reason to resile from the view which was expressed by my brother Burkitt and myself in the case of *Tilak Singh* v. *Chhutta Singh* (1). I would therefore dismiss the plaintiffs' suit.

BANERJI, J.—This appeal arises in a suit brought by the plaintiffs appellants to recover money alleged to be due to them by Babu Lal, the deceased father of the defendants, who are minors. It is stated that the dealings between the plaintiffs and Babu Lal continued till the 9th of February 1900. As the present suit was instituted on the 4th of August 1905, it was on the face of it beyond time. The plaintiffs, however, invoke in aid certain payments and acknowledgments made after the death of Babu Lal, in order to take the case out of the operation of the Statute of Limitation, and the question before us is whether those payments and acknowledgments save the operation of limitation.

It appears that after the death of Babu Lal, Musammat Sundar Dei, the mother of the minor defendants, applied to the District Judge of Allahabad for a certificate of guardianship. Her application was granted on condition of her furnishing security. As security was not furnished no certificate issued. Meanwhile the Court permitted Sundar Dei to sell the stock-in-trade of a shop which Babu Lal used to carry on in his life-time and the proceeds of the sale were deposited by her in Court. A part of these proceeds were paid, under the orders of the Court, to the plaintiffs on the 30th of September 1902. Musammat Sundar Dei, as guardian of the minors, also acknowledged liability for the debt due to the plaintiffs. The plaintiffs rely upon this payment by the Court and the acknowledgments made by Sundar Dei.

As for the payment, it cannot in my opinion be of any avail to the plaintiffs. It was not a payment of interest as such within the meaning of the first paragraph of section 20 of the Indian Limitation Act, and even if it was a payment of a part of the

(1) (1904) I. L. R., 26 All., 598.

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debt by the debtors or their agent duly authorized in that behalf, the fact of the payment does not appear in the handwriting of the person making it. It is manifest from the provisions of the section that the part payment must appear in the handwriting of the debtor or his authorized agent. In the present case the payment appears in the handwriting of the District Judge, who was certainly not the agent of the defendants.

There remains the question of the acknowledgments made by Sundar Dei. If they are valid acknowledgments within the meaning of section 19, the claim is not time barred. As Sundar Dei did not obtain a certificate of guardianship, she must be deemed to have acted as the natural guardian of the minors. The question then arises whether an acknowledgment by the natural guardian of a minor is a sufficient acknowledgment within the purview of section 19, and this is the main question to be determined in this case. The course of rulings on the point is not uniform, and the question is not free from difficulty. The Legislature proposes to solve the difficulty by an amendment of the Limitation Act and by declaring such acknowledgments to be valid. The determination of the question before us is therefore necessary only for the purposes of the present case and of cases similar to it. After giving the matter my best consideration, I am of opinion that an acknowledgment by the natural guardian of a minor acting within the scope of his authority as guardian is an acknowledgment within the purview of section 19 and saves the operation of limitation. Under that section the acknowledgment must be made in writing and signed by the party against whom any property or right is claimed "either personally or by an agent duly authorized in this behalf." Is a natural guardian an agent duly authorized within the meaning of the section? It is contended that an agent must be appointed by the principal, and as a minor cannot appoint an agent an acknowledgment of liability cannot be made on behalf of a minor. I am unable to agree with this contention. There may be an agent by operation of law. An agent has been defined to be "a person having express or implied authority to represent or act on behalf of another person" and "the relationship of principal and agent may arise (*a*) by express appointment by the

principal; (*b*) by implication of law from the situation of the parties" (Bowstead's Digest of the Law of Agency, pp. 1 and 11). That it is not necessary that an agent must be appointed by the principal is manifest from the fact that a receiver, an executor, the manager of the Court of Wards and the manager of a joint family can be regarded as agents. And it has been held that these persons are competent to make part payment or to acknowledge a debt which would bind a minor or a ward or the estate in charge of the receiver or executor. In *Chinnery* v. *Evans* (1) it was held that payment by a receiver in charge of the estate of a mortgagor is "payment in law by the legal agent of the person liable to pay." In *Beti Maharani* v. *The Collector of Etawah* (2) their Lordships of the Privy Council were of opinion that an acknowledgment by the Court of Wards saves limitation. They observe:— "If there has been a valid acknowledgment by Ajudhia and also by the Court of Wards, as contended, the right of suit is saved." Further on they say:— "It is difficult to see how a sarbarahkar, not being guardian, can be authorized to admit a personal liability," and they hold that the act of the Court of Wards would bind the ward (p. 208). The Court of Wards not being the party liable for the debt, an acknowledgment of debt by it such as saves limitation can only be an acknowledgment as agent of the ward. This Court has held in *Kamla Kuar* v. *Har Sahai* (3) that an acknowledgment by the Court of Wards gives a fresh start for the computation of limitation. It has also been held that the manager of a joint Hindu family can validly acknowledge debts on behalf of minor members of the family. As under section 21 of the Limitation Act an acknowledgment by one of several partners does not save limitation against another, an acknowledgment by the manager of a joint Hindu family cannot be regarded as an acknowledgment by a partner, and can only be deemed to be an acknowledgment by an agent. The manager of a joint Hindu family is no doubt something more than a mere agent, but for the purposes of an acknowledgment under the Limitation Act his act can only be that of an agent. It is clear that the persons referred to above, none of whom were

(1) (1864) 11 H. L. C., 115. (2) (1894) I. L. R., 17 All., 198.
(3) Weekly Notes, 1888, p. 187.

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appointed by the party liable for the debt, may still be his agents by operation of law.

The natural guardian of a Hindu minor may do all acts which the minor himself could have done, if he were of full age, and the acts of the guardian would be binding on the minor, if they are for his benefit and advantage. A guardian is competent to sell and mortgage the minor's property, if it is necessary to do so in the interests of the minor. The powers of a guardian under the Guardians and Wards Act are similar, and so are the powers of the Court of Wards. It is surely the duty of the guardian, as of the Court of Wards, to discharge the debts of the ward with the income of his estate, in whole or in part, or to pay interest as such in order to keep down the debt. If the guardian pays interest or makes part payment, he does so in the interests of the minor and such payments are binding on the minor. If the payment appears in the handwriting of the guardian it would, in my opinion, save the operation of limitation under section 20 of the Limitation Act, the payment being one by an agent authorized to make it on the minor's behalf. If the guardian can make part payments, he can also acknowledge a debt not already time-barred, if it is in the interests of the minor to do so. As the guardian is not the party liable, he makes part payment or acknowledgment on behalf of his ward and therefore as his agent. And when such payment or acknowledgment is made for the benefit of the minor the guardian acts within the scope of his authority and acts as an agent duly authorized in this behalf. I am unable to see any distinction in principle between a part payment by a guardian and the acknowledgment of a debt by him. In my judgment when a guardian acting within the scope of his authority and for the benefit of a minor makes part payment of a debt or acknowledges a debt, the part payment or acknowledgment is by an agent duly authorized in this behalf and gives a fresh start for the computation of limitation.

The weight of authority is in favour of this view. In *Chinnaya Nayudu* v. *Gurunatham Chetti* (1) it was held by a Full Bench of the Madras High Court that the manager of a Hindu family has the same authority to acknowledge as he has to create

(1) (1882) I. L. R., 5 Mad., 169.

a debt, and this, as I have shown above, he can do as agent of the other members of the family and not as partner.

In *Sobhanadri Appa Rau* v. *Sriramulu* (1) a Bench of the same Court presided over by Muttusami Ayyar, J., held that a guardian has authority to acknowledge a debt on behalf of the minor. In *Kailasa Padiachi* v. *Ponnukannu* (2) the same learned Judge expressed the opinion that "a guardian is legally competent in the ordinary course of management either to acknowledge a debt due by his or her ward or to make a part payment or to pay interest." A similar view was held by Sir Arnold White, C. J., and Benson, J., in *Subramania Ayyar* v. *Arumuga Chetty* (3).

A Full Bench of the Bombay High Court held in *Annapagauda Sangadigyapa* (4) that a guardian appointed under the Guardians and Wards Act can sign an acknowledgment of liability provided it be shown that the guardian's act was for the protection or benefit of the ward's property. An earlier ruling to the contrary was overruled.

The Calcutta High Court in two cases held the contrary view, but in the recent case of *Narendra Nath Sarkar* v. *Rai Charan Haldar* (5) Rampini and Pratt, JJ., held that a guardian of a minor is an agent duly authorized to pay interest upon a debt due by the minor. It is difficult to follow the reasoning by which the learned Judges distinguished the case of part payment from that of acknowledgment in the case of a guardian. If a guardian is the minor's authorized agent in the one case he must be so in the other.

The only case in this Court which is against the appellant's contention is that of *Tilak Singh* v. *Chhutta Singh* (6) in which it was held that part payment by the mother and natural guardian of a minor is not a payment by an agent within the meaning of section 20 of the Limitation Act. With great respect for the learned Judges who decided that case I am unable to agree with them.

That an acknowledgment of a debt by a guardian may be for the benefit and advantage of a minor can admit of no doubt. The present case is an instance in point. Had the mother of the

(1) (1893) I. L. R., 17 Mad., 221.
(2) (1894) I. L. R., 18 Mad., 456.
(3) (1902) I. L. R., 26 Mad., 330.
(4) (1901) I. L. R., 26 Bom., 221.
(5) (1902) I. L. R., 29 Calc., 647.
(6) (1904) I. L. R., 26 All., 593.

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defendants not acknowledged the debt due to the plaintiffs, the property of the minors would at once have been sold, whereas, as the petition of Sundar Dei, dated the 4th of September 1902, shows, a portion of the interest was remitted and the minors were said to have benefited to the extent of Rs. 1,441-7-0. This benefit the minors would not have obtained save for the action taken by their mother and guardian. It is difficult to see how this benefit could be obtained by obtaining a certificate of guardianship and placing the minors under the protection of the Court. In the present case Sundar Dei did apply for a certificate of guardianship, but she was unable to furnish security as required by the Court and therefore the minors could not be placed under the protection of the Court. Upon the evidence on the record I am of opinion that the acknowledgment of the debt due to the plaintiffs by the mother and guardian of the minor defendants was for their benefit, and it was not even hinted in the argument before us that it was not so. No useful purpose would therefore be served by asking the Court below to find whether the acknowledgment was beneficial to the interests of the minors. In my judgment the acknowledgment made by Sundar Dei saves the operation of limitation under section 19 of the Limitation Act, and the Court below was wrong in dismissing the suit on the ground of limitation. I would therefore allow the appeal, and, setting aside the decree of the Court below, remand the case to that Court under section 562 of the Code of Civil Procedure for trial of the other issues raised by the defendants.

RICHARDS, J.—This was a suit to recover a sum of Rs. 3,358-9-3 against the minor defendants as heirs and representatives of one Babu Lal, deceased. The facts are not disputed and are shortly as follows :—

The plaintiffs advanced to Babu Lal, the father of the defendants, a sum of Rs. 35,662-4-3 bearing interest at the rate of 8 annas per cent. per mensem. During his life-time Babu Lal paid up Rs. 32,350-8-0 leaving Rs. 4,221-8-0 still due for principal and interest at his death. Babu Lal was possessed of a considerable amount of property, and he died on the 5th of March 1906, leaving his minor sons, the defendants, and his widow Musammat Sundar Dei him surviving. The minor defendants became

entitled to the property left by Babu Lal as his heirs. The decree claimed is only against the assets of the deceased in the hands of the minor defendants. The plaintiffs do not seek to make the minor defendants personally liable. Musammat Sundar Dei applied for a certificate of guardianship of the minors, and her application was granted by the District Judge of Allahabad, but subject to a condition that she would give security for the due administration of the property of the minors. Musammat Sundar Dei was never able to fulfil the condition as to security, with the result that her appointment fell through and we must regard her as simply the natural guardian of the minors.

Meantime efforts were being made to arrange the debts due to the plaintiffs and others. Musammat Sundar Dei presented a petition to the District Judge clearly admitting the debt. Babu Lal had carried on a shop business in his life-time, and Musammat Sundar Dei, with the approval of the District Judge, sold some of the property. The amount realized was brought into the Court of the District Judge, and on the application of Musammat Sundar Dei was paid over to the plaintiffs in reduction of their debt. In the course of these proceedings Musammat Sundar Dei more than once admitted the debt. The plaintiffs abandoned part of the interest due, and the debt was thus reduced by a sum of Rs. 2,003-6-1. This payment was made before the period of limitation had expired and within three years of the institution of the suit. The debt was no doubt reduced both as to principal and interest, but the fact of the part payment of the principal does not appear " in the handwriting " of Musammat Sundar Dei, and the learned advocate for the appellants did not contend that the facts amounted to a payment of interest " as such " by Musammat Sundar Dei and was apparently content to rest his case on the provisions of section 19 of the Limitation Act. Musammat Sundar Dei on behalf of the minors on numerous occasions admitted the debt due to the plaintiffs, and it is not disputed that, if her acknowledgment could legally bind the minors, the acknowledgment which she in fact made was amply sufficient to prevent the debt being barred by limitation. The proceedings in the District Judge's Court were not regular, and I only refer to them because they demonstrate that all parties

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were acting *bonâ fide* in the interests of the minors and their property. The minor defendants plead limitation, and say that they are not bound by the acknowledgments made by their mother. Musammat Sundar Dei was the natural guardian of the minors according to Hindu law. Beyond all question she acted throughout in the interests of the minors. If the debt had not been reduced and if the guardian had not made acknowledgments, but had taken up a hostile attitude and put the plaintiffs at arm's length, the latter would unquestionably have at once sued the minors. The mother was anxious, and properly anxious, to avoid a suit by the plaintiffs, and for this reason she entered into the negotiations in the course of which the payments were made and the acknowledgments were given, and as the result a suit was averted. I hold that Musammat Sundar Dei acted in the interests of and for the benefit of the minors whose natural guardian she was.

According to Hindu law the powers of a natural guardian acting *in the management of the minors' property* and in the interests of the minors are practically unlimited. The guardian can sell or mortgage the minors' property, and in my opinion a natural guardian could certainly legally pay a debt of the minors and obtain a good discharge. Indeed, it seems to me that if a natural guardian neglected to pay a just debt of the minor and allowed a suit to be brought he would be acting contrary to his clear duty. Section 20 of the Limitation Act provides that when interest on a debt or legacy is before the expiration of the prescribed period paid as such by the person liable to pay the debt or legacy or by his agent duly authorized in this behalf, or when part of the principal of a debt is before the expiration of the prescribed period paid by the debtor or by his agent duly authorized in this behalf, a new period of limitation should be computed. Provided that in the case of part payment of the principal of the debt the fact of the payment appears in the *handwriting of the person* making the same. As already pointed out, the learned advocate for the plaintiffs does not rest his case on section 20, but I quote the section as I think a consideration of its provisions helps us to consider the provisions of the preceding section 19. Had Musammat Sundar Dei made a payment of interest *as*

such, or if the [illegible] her handwriting, [illegible]ct of part payment of the principal appeared in payments were not [illegible] think it could hardly have been said that the minors within the [illegible]ade by the d[illegible] authorized agent of the the person empowere[illegible]eaning of the se[illegible]on. The guardian was perty, and in a case lik[illegible] Hindu law to [illegible]nage the minors' pro- payment. Indeed, it seems [illegible]resent wi[illegible]duty to make the the act of the guardian was in law [illegible] well be said that selves. I think it necessary that we sho[illegible]minors them- are applying the provisions of an Indian [illegible] that we which could never arise in England, but wh[illegible]t arise day in India. Under the Law in England the entire estate of a deceased person vests in his executor or administrator, and the executor or administrator, although he may have no beneficial interest whatever in the estate, is bound to pay the debts of the deceased to the extent of the assets and can certainly make a part payment or give an acknowledgment so as to prevent a debt being barred by limitation. It would make no difference that the persons beneficially interested in the estate were minors or under any other disability. We must, however, assume that under the circumstances of the present case the plaintiffs cannot claim the benefit of section 20.

Section 19 provides:—If, before the expiration of the period prescribed for a suit, an acknowledgment of liability has been made in writing signed by the party or by some person through whom he derives title, a new period shall be computed." Two explanations follow, and explanation 2 is as follows:—

"In this section signed means either personally or by an agent duly authorized in this behalf."

It may be noted that the word "agent" only appears in the explanation, it does not appear in the section proper. The old Act XIV of 1851 did not contain explanation II. It is clear therefore that explanation II was added to the section not for the purpose of restricting the section as it originally stood, but to point out that the acknowledgment mentioned in the section might not only be signed by *the person* but might also be signed by a lawfully authorized agent. I do not think that the word "personally" in explanation 2 of section 19 renders the

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construction that ought to be given to section 19 different to the construction that ought to be given to section [illegible] in the case of action through agents. [illegible] word was only introduced for the purpose I have mentioned and to draw a contrast between a person acting without an agent and a person acting through an agent.

It is contended on behalf of the defendants that a minor cannot appoint an agent and that therefore, no matter how *bonâ fide* the action of their natural guardian may have been, they are not bound by her acknowledgment. A minor may himself appoint an agent, but the question is—can there be a legally constituted agent within the meaning of the section without appointment? Suppose Babu Lal had died leaving (as he did) a debt due to the plaintiffs and a widow and minor sons, and suppose in order to avoid a suit the widow as guardian of the minors had regularly paid the interest as such, surely the assets of the deceased in the hands of the minors would be liable for the debt of the deceased and the creditors could rely on the provisions of section 20 without having occasion to institute a suit the moment Babu Lal was dead. If such a payment would bind the minors, it could only bind them because the action of their guardian was either in the eye of the law *their* action or because she was their legally authorized agent *within the meaning of the section.* If such a payment would bind the minors, in my opinion they are equally bound by their guardians' acknowledgment, provided it was given for their benefit. The only distinction in my opinion is that a part payment of principal or the payment of interest would perhaps more frequently be considered for the benefit of a minor than the giving of an acknowledgment. This, however, has nothing to do with the construction of the section. Whether a particular act was or was not for the benefit of the minor is an inference to be drawn from the facts and circumstances of each case. There would be hardly any difference between one isolated payment of interest just before the expiration of limitation and a written acknowledgment given on a similar occasion; and yet both might be for the benefit of the minor. It clearly appears from the judgment of their Lordships

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of the Privy Council in the case of *Beti Maharani* v. *The Collector of Etawah* (1) that their Lordships were of opinion that the acknowledgment of the Collector acting on behalf of the Court of Wards would bind a minor whose estate was under the management of the Court.

In such a case it seems to me that the Collector must be regarded as the agent appointed by law to act for the minor or (which is really the same thing), the act of the Collector must be looked upon as the act of the minor. If an Act of the Legislature can confer such a power on the Collector, I can see no reason why the same power is not included in the wide powers vested by virtue of Hindu Law in the guardian of a minor acting for his benefit. It was held in the case of *Narendra Nath Sarkar* v. *Rai Charan Haldar* (2) that a certificated guardian is an agent duly authorized to pay interest on a debt within the meaning of section 20. A distinction was drawn by the learned Judges between the power of a certificated guardian under section 20 and under section 19. That distinction cannot be drawn in the present case, because Musammat Sundar Dei is not a mere certificated guardian with the limited powers of such a guardian. She is a natural Hindu guardian with the extensive powers of such a guardian, and she was in my opinion acting for the benefit of the minors when she gave the acknowledgments.

It has been held in numerous cases that a manager of a joint Hindu family can give a binding acknowledgment even where minors are concerned. It would indeed be a inconvenient state of things if the manager of a joint Hindu family could not make a part payment of principal or a payment of interest so as to bind minor members of the family. It is urged that the position of the manager of a Hindu family is different from the position of a guardian, and he can give an acknowledgment or make a payment because of the joint nature of the family and estate. This cannot be the reason, because section 21 of the Limitation Act provides that nothing in sections 19 and 20 renders one of several joint contractors, partners, etc., chargeable by reason only of a written acknowledgment signed or a payment made by or by the agent of any other or others of them. If the manager of

(1) (1894) I. L. R., 17 All., 198, at p. 208. (2) (1902) I. L. R., 29 Calc., 647.

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a Hindu family can be the "agent," within the meaning of the sections, of a minor member of the family, I can see no reason why the natural guardian may not be the agent also. These cases and the opinion of their Lordships of the Privy Council show that there may be an agent within the meaning of the sections who has not been actually appointed by the person liable. In the Full Bench Case of *Annapagauda Tammangauda* v. *Sangadiyapa* (1) it was held that a guardian appointed under the Guardians and Wards Act could both pay interest, make a part payment or give an acknowledgment. In *Kamla Kuar* v. *Har Sahai* (2) it was held that the Collector in a case under the management of the Court of Wards could give an acknowledgment. Edge, C.J., says:—"He" (the Collector) "was the person who represented the minor defendant and the estate." The natural guardian of a minor Hindu is, in my opinion, entitled by law to act on behalf of the minor in the management of his property, and the act of the guardian, if it is for the benefit of the minor, binds the estate of the latter. In the present case the acknowledgment by Sundar Dei was for the benefit of the minors and they are bound by it either as "their own act" or as the act of the person whom the law authorizes to act in their behalf, that is, of their "agent duly authorized." I think in the circumstances of the present case the acknowledgment of Musammat Sundar Dei binds the estate in the hands of the defendants as an acknowledgment within the meaning of section 19 of the Limitation Act. I would allow the appeal with costs and remand the case.

BY THE COURT.—The opinion of the majority of the Bench being that the case should be remanded under section 562 of the Code of Civil Procedure, we allow the appeal, set aside the decree of the Court below and remand the case under the provisions of that section with directions that it be re-admitted in the file of pending suits and be disposed of according to law. Costs here and hitherto will abide the event.

Appeal decreed and cause remanded.

(1) (1901) I. L. R., 26 Bom., 221. (2) Weekly Notes, 1883, p. 187.